

HR 4 – Supplemental information provided by Mark Petroni, USFS Retired

March 26, 2013

Subject: HR 4

To: House Agriculture Committee

This document will provide supplemental information concerning grazing, timber harvest and irrigation water diversions and impoundments as they relate to the Forest Jobs and Recreation Act. I have provided quotes from the Forest Jobs and Recreation Act (FJRA) and copied pertinent sections of other laws FJRA references and provided personal narrative of how these laws were applied to wilderness I managed for 19 (1989-2008) years as the District Ranger of the Madison Ranger District, Beaverhead-Deerlodge National Forest. My comments appear in bold text at the end of each section.

I. Livestock Grazing in Wilderness

Forest Jobs and Recreation Act language concerning livestock grazing.

*"LIVESTOCK.—Within the wilderness areas, the grazing of livestock in which grazing is established before the date of enactment of this Act **shall be allowed to continue**, subject to such reasonable regulations, policies, and practices as the Secretary concerned determines to be necessary, in accordance with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1131(d)(4)); with respect to wilderness areas administered by the Secretary of Agriculture, the guidelines described in House Report 96–617 of the 96th Congress; and with respect to wilderness areas administered by the Secretary of the Interior, the guidelines described in Appendix A of House Report 101–405 5 of the 101st Congress."*

(m) SNOWCREST WILDERNESS AREA.—With respect to the Snowcrest Wilderness Area—(1) the continuation of reasonable motorized access to maintain water infrastructure for cattle that was constructed to protect fluvial Arctic Grayling and other aquatic species in the Ruby River may continue (A) subject to a permit; and (B) in accordance with— (i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and (ii) the guidelines described in House Report 96–617 of the 96th Congress; and (2) the trailing of sheep across the Snowcrest Wilderness area to reach existing grazing allotments in the Gravelly Mountains may be continued for the tenure of the allotments—

Section 4(d)4 of the Wilderness Act (1622 U.S.C 1131(d) (4)):

"...(2) The grazing of livestock, where established prior to September 3, 1964 shall be permitted to continue subject to such reasonable regulation as are deemed necessary by the Secretary of Agriculture."

Congressional Grazing Guidelines 96-617

"Congress set forth five basic principles in the House Report:

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First, "There shall be no curtailments of grazing in wilderness areas simply because an area is...wilderness...." Any reduction in numbers of livestock must be made on the same basis as if the allotment were not in wilderness.

Second, "The maintenance of supporting facilities, existing in an area prior to its classification as wilderness (including fences,...stock tanks, etc.) is permissible in wilderness." The use of motor vehicles and motorized equipment is allowable only "where practical alternatives do not exist," and such use is "occasional," "expressly authorized," and "based on a rule of practical necessity and reasonableness."

Third, "The replacement...of deteriorated facilities...should not be required to be accomplished using 'natural materials,' unless [doing so] would not impose unreasonable additional costs on grazing permittees."

Fourth, "The construction of new...facilities...is permissible...." However, this must be done "...primarily for the purpose of resource protection...rather than to accommodate increased numbers of livestock."

Fifth, "The use of motorized equipment for emergency purposes such as rescuing sick animals...is also permissible. This privilege is to be exercised only in true emergencies...." In other words, a permittee may use a motor vehicle to place feed in an emergency, but not for routinely checking on the herd.

Finally, Congress wanted to make sure that these guidelines were to be applied where grazing was continuing, and "...not be considered as a direction to re-establish uses where such uses have been discontinued."

In my 19 years of as the District Ranger of the Madison Ranger District on the Beaverhead-Deerlodge National Forest I managed livestock grazing in the Lee Metalf Wilderness. In fact the Madison Ranger District has the largest grazing program of any District in Western Montana. Motorized us on all the grazing allotments, including those outside the wilderness, was strictly controlled. All off road travel was approved in advance and only allowed for special circumstances such as recovering an injured or sick animal, major reconstruction of improvement such as fences and pipelines, noxious weed control, and caching large quantities of salt for later distribution by horse back. This type of motorized access is exactly how the allotments were managed in the Lee Metcalf Wilderness and how allotments would be managed in wilderness created by the Forest Jobs and Recreation Act. In fact, considering language in the original 1964 Wilderness Act that was later clarified by congress in 96-617, allowing motorized use in wilderness becomes law and the Agencies have no choice but to allow it as specified in the law.

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The Lee Metcalf Wilderness was created in 1983, livestock grazing continues in that wilderness 30 years later.

In my experience, livestock grazing permits are cancelled or reduced for three basic reasons:

1. Failure to comply with the terms and conditions of a grazing permit. (i.e. grazing more animals than permitted or failing to maintain grazing improvements)
2. Resource damage caused by livestock grazing.
3. User conflict, basically someone complains that cattle are conflicting with their use of Public Land.

The Forest Jobs and Recreation Act completely eliminates user conflict from consideration. Livestock are not only allowed in wilderness areas, their use is codified in Federal Statute. If I were a rancher faced with potential wilderness on my allotment, I would support the wilderness designation because it essentially guarantees my continued grazing as long as I take care of the resource and comply with the terms of my grazing permit.

II. Irrigation diversions, ditches and impoundments.

Forest Jobs and Recreation Act language concerning diversions, ditches and impoundments.

(1) WATER IMPOUNDMENT STRUCTURES.—(1) IN GENERAL.—The Secretary concerned may issue a special use authorization to an owner of a water storage, transport, or diversion facility located within the areas designated as wilderness by section 203 for the continued operation, maintenance, and reconstruction of the facility if (A) the facility was in existence before the date of the designation of the wilderness area; and (B) the Secretary concerned determines that (i) the facility has been in substantially continuous use to deliver water for the beneficial use on the non-Federal land of the owner since the date of the designation of the wilderness area; 25(ii) the owner of the facility holds a valid water right for use of the water under State law, with a priority date that predates the date of the designation of the wilderness area; and (iii) it is not practicable or feasible to relocate the facility to land outside the boundary of the wilderness and continue the beneficial use of water on the non-Federal land recognized under State law.

(2) USE OF MOTORIZED EQUIPMENT AND MECHANIZED TRANSPORT.—The special use authorization under paragraph (1) may allow for the use of motorized equipment and mechanized transport if the Secretary concerned determines, after conducting a minimum tool analysis, that the use of nonmotorized equipment and nonmechanized transport is impracticable or infeasible.

Section 4(d)4 of the Wilderness Act (1622 U.S.C 1131(d) (4)):

"...(4) Water resources, reservoirs and other facilities; grazing within the wilderness areas in the national forest designated by this chapter, (1) the President may, within a specific area and in

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accordance with such regulation as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water –conservation works, power projects, transmission lines and other facilities needed in the public interest, including the road construction and maintenance essential to better serve the interest of the United States and the people thereof than will its denial;...”

In addition to special use authorizations for water resources many of the impoundments, diversions and ditches are already authorized by easements. These easements were required by the 1986 Colorado Ditch Bill. Any improvement in place prior to 1976 could be granted an easement. In my experience in the Lee Metcalf Wilderness nearly all impoundments, diversions and ditches were granted easement even though the Wilderness had already been created. I routinely permitted heavy equipment such as backhoes and excavators to maintain and reconstruct these improvements in the Lee Metcalf Wilderness. Easements are a private property right and maintenance of said private property is also a right.

III. Mechanical Treatment (Timber Harvest).

Forest Jobs and Recreation Act language concerning Mechanical Treatment.

(b) PERFORMANCE REQUIREMENTS.—Subject to subsection (g), on the eligible land, the Secretary shall place under contract for the mechanical treatment of vegetation (1) on the Beaverhead-Deerlodge National Forest, a minimum of 5,000 acres annually until the date on which a total of 70,000 acres in the National Forest have been placed under contract; and (2) on the Kootenai National Forest—(A) 2,000 acres during the first year after the date of enactment of this Act; (B) 2,500 acres during the second year after the date of enactment of this Act; and (C) 3,000 acres during each subsequent year until the date on which a total of 30,000 acres in the National Forest have been placed under contract.

(e) JUDICIAL REVIEW.—Any judicial proceeding arising from an authorized forest and watershed restoration project shall be conducted in accordance with section 106 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6516).

PRIORITY.—Consistent with the purposes of this title, the Secretary shall give priority to carrying out authorized forest and watershed restoration projects in areas (A) in which the road density exceeds 1.5 miles per square mile; (B) in the wildland-urban interface (as defined in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511)) that are at risk of wildfire that threatens public infrastructure or private property; (C) in which fish and wildlife habitat connectivity is compromised as a result of past management practices; and (D) that contain forests that are at risk from insect epidemics or high-severity wildfires.

(5) ENVIRONMENTAL REVIEW.—An environmental review of authorized forest and watershed restoration projects shall be carried out in accordance with section 104 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6515), except that—(A) the review shall also address (i) the

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activities necessary to meet the purposes and requirements of this title; and (ii) the site-specific impacts of an authorized forest and watershed restoration project; (B) on signing of a record of decision or finding of no significant impact for the authorized forest and watershed restoration project, the Secretary shall implement the authorized forest and watershed restoration project; and (C) if the Secretary or a court determines that additional review is warranted due to significant new circumstances after implementation of an authorized forest and watershed restoration project has begun, the additional analysis shall not interrupt the implementation of the activities that are not subject to the additional review, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Healthy Forests Restoration Act of 2003 (16 U.S.C. 6515),

Selected text from Section 104

IN GENERAL.—Except as provided in subsection (d), in the environmental assessment or environmental impact statement prepared under subsection (b), the Secretary shall study, develop, and describe— (A) the proposed agency action; (B) the alternative of no action; and (C) an additional action alternative, if the additional alternative— (i) is proposed during scoping or the collaborative process under subsection (f); and (ii) meets the purpose and need of the project, in accordance with regulations promulgated by the Council on Environmental Quality. (2) MULTIPLE ADDITIONAL ALTERNATIVES.—If more than 1 additional alternative is proposed under paragraph (1)(C), the Secretary shall— (A) select which additional alternative to consider, which is a choice that is in the sole discretion of the Secretary; and (B) provide a written record describing the reasons for the selection.

Selected text from Section 105

(b) EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.—In the judicial review of an action challenging an authorized hazardous fuel reduction project under subsection (a), Congress encourages a court of competent jurisdiction to expedite, to the maximum extent practicable, the proceedings in the action with the goal of rendering a final determination on jurisdiction, and (if jurisdiction exists) a final determination on the merits, as soon as practicable after the date on which a complaint or appeal is filed to initiate the action.

The Forest Jobs and Recreation Act focus mechanical treatment on those areas of the National Forests most in need. Specifically, by incorporating the goals of the Healthy Forest Restoration Act and its streamlined appeal process. FJRA address fuel reduction in the wildland urban interface, insect infestation and watershed improvement needs. Coupling these goals to collaboratively developed projects and support from many conservation groups FJRA had developed a recipe for accomplishing forest restoration and getting timber to saw mills.

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FJRA also allows projects to be implemented in the face of challenge and allows portions of a project to proceed if the new information does not affect the project.

In my experience as a District Ranger I faced the frustration of having projects appealed and litigated. FJRA helps break this gridlock with collaboration and streamlined analysis and appeal process. It also places specific requirements on the courts to expedite litigation.

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